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Calendar No. 341

99TH CONGRESS
1st Session

SENATE

REPORT
99-153

AMENDING THE LANHAM ACT TO IMPROVE CERTAIN PROVISIONS RELATING TO CONCURRENT REGISTRATIONS

OCTOBER 8 (legislative day, SEPTEMBER 30), 1985.—Ordered to be printed

Mr. THURMOND, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany S. 1002]

The Committee on the Judiciary to which was referred the bill (S. 1002), to amend the Lanham Act to improve certain provisions relating to concurrent registrations, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

I. PURPOSE

The purpose of the proposed legislation is to amend section 1052(d) of title 15, United States Code, known as the Lanham Act, to improve certain provisions relating to concurrent registrations. The bill would correct an anomaly in the Federal laws governing trademarks by permitting the Patent and Trademark Commissioner to accept applications for concurrent registrations where the first filing party consents to such registration.

II. STATEMENT

The anomaly which this bill is designed to address is best illustrated by way of an actual example. In late 1982, Associates First Capital Corporation, a wholly-owned subsidiary of Gulf & Western Industries proposed the mark "Equity Express" in connection with a loan service for homeowners. An independent professional search as of December 13, 1982, disclosed no conflicting prior uses of that particular trademark. In fact, however, Washington Mutual Savings Bank of Seattle, Washington, had adopted the same mark for similar services on October 18, 1982, but its pending application was

71-010

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apparently not available in the records as of the date of the search. Upon discovery of their dual use of the mark, the two users entered into an agreement that acknowledged Washington Mutual's exclusive rights in four states and Associates' exclusive rights in 46 states.

While Associates' right to continued use of the mark is clear, an anomaly in the Lanham Act precluded Associates from obtaining a Federal concurrent use registration to protect its rights by foreclosing subsequent use by others in the states where Associates is clearly the first user. This is notwithstanding the fact that the Lanham Act expressly provides for, and indeed encourages, concurrent use registration.

Under 15 U.S.C. 1052(d), a concurrent use registration may be granted in the discretion of the Patent and Trademark Commissioner in two situations. First, it may be granted if both parties use the mark before the first filing date. Second, such a registration may be granted if a court determines that more than one party is entitled to use. In Associates' case, or in the case of any similarly situated party, neither provision technically affords relief. Associates' lawful use of the mark occurred after Washington's filing date, but before anyone could reasonably have known of its filing and before its registration date. No court order is possible because the parties' amicable resolution of their differences means there is no case or controversy which could form the basis for a suit.

The Patent and Trademark Office has acknowledged that this anomaly exists in the law. That Office has indicated that it does not oppose this narrowly-worded change in the Lanham Act.

The proposed legislation would permit the Patent and Trademark Commissioner to grant concurrent registrations where the first filing party consents to such registration. As with any concurrent registration, the Commissioner would be required to determine that confusion or deception would not be likely to result and would be authorized to impose conditions relating to the mode or place of use of the mark to prevent such confusion or deception.

The language of S. 1002 presents no antitrust problem. Instead of limiting competition, it serves to promote alternative business efforts by making a given trademark available for registration to more than one user. The use of the concurrently-registered trademark will be under limitations imposed by the Commissioner that not only ensure that consumers are not confused in areas where they do not compete, but that others could not engage in deception by using the same mark in other areas. The amendment does not provide any immunity under the antitrust laws. Accordingly, if an agreement for concurrent use, pursuant to this provision, injured competition, the United States or other plaintiffs entitled to sue under the antitrust laws could bring suit to prevent any injury to competition and to obtain any other appropriate relief.

III. History of the Legislation

During the last days of the 98th Congress, Senator Charles McC. Mathias (R-Md.) offered an amendment to H.R. 6286,[1] part of

[1] H.R. 6286, 98th Cong., 2nd Sess., 130 Cong. Rec. H9936 (daily ed. September 20, 1984).

which was at the request of Senate Judiciary Committee Chairman Strom Thurmond (R-S.C.), designed to avoid the problem created by the present language in the Lanham Act, as illustrated by the plight of Associates First Capital Corporation. The amendment was adopted by the Senate by voice vote, without objection,[2] but was rejected by the House of Representatives as non-germane.[3]

Thereafter, in the 99th Congress, on April 25, 1985, Judiciary Committee Chairman Strom Thurmond, reintroduced the language of the amendment as S. 1002, which was read twice and referred to the Committee on the Judiciary.

The bill was subsequently referred to the Subcommittee on Patents, Copyrights and Trademarks. On July 12, 1985, the Subcommittee, having approved the measure, was discharged from further consideration of the bill. S. 1002 was unanimously approved by the full Judiciary Committee on September 12, 1985.

IV. Committee Action

On September 12, 1985, with a quorum present, by voice vote and without objection heard, the Committee on the Judiciary ordered S. 1002 favorably reported without amendment.

V. Regulatory Impact Statement

In accordance with paragraph 11(a), rule XXVI of the Standing Rules of the Senate, it is hereby stated that the Committee anticipates that the bill will have no additional regulatory impact. After due consideration, the Committee concluded that the changes in existing law contained in the bill will not increase or diminish any present regulatory responsibilities of the U.S. Department of Commerce or any other department or agency affected by the legislation.

VI. Cost of Legislation

In accordance with paragraph 11(a), rule XXVI of the Standing Rules of the Senate, the Committee offers the following report of the Congressional Budget Office:

U.S. Congress,
Congressional Budget Office,
Washington, DC, October 1, 1985.

Hon. Strom Thurmond,
Chairman, Committee on the Judiciary, U.S. Senate, Dirksen Senate Office Building, Washington, DC.

Dear Mr. Chairman: The Congressional Budget Office has reviewed S. 1002, a bill to amend the Lanham Act to improve certain provisions relating to concurrent registrations, as ordered reported by the Senate Committee on the Judiciary, September 12, 1985. We estimate that enactment of this bill would result in no net cost to the federal government.

S. 1002 would waive a restriction for filing a concurrent use trademark application. According to the Patent and Trademark

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[2] 130 Cong. Rec. S14248-S14250 (daily ed. October 11, 1984).
[3] 130 Cong. Rec. H12231-H12232 (daily ed. October 11, 1984).

Office (PTO), the number of applications for concurrent trademark registrations is not expected to increase significantly as a result of this provision. The cost to PTO for processing any additional trademark registrations would be offset by application fees, resulting in no net cost to the federal government.

No costs would be incurred by state or local governments as a result of enactment of this bill.

If you wish further details on this estimate, we will be pleased to provide them.

With best wishes,

Sincerely,

RUDOLPH G. PENNER.

VII. CHANGES IN EXISTING LAW

In compliance with paragraph 12, rule XXVI of the Standing Rules of the Senate, changes in existing law made by S. 1002, as reported, are shown as follows (new matter is printed in italic, and existing law in which no change is proposed is shown in roman):

UNITED STATES CODE ANNOTATED,

TITLE 15—COMMERCE AND TRADE

* * * * * * *

CHAPTER 22—TRADEMARKS

Subchapter I—Principal Register

SECTIONS 1051, 1052 APPEAR IN THIS VOLUME

Sec.
1051. Registration; application; payment of fees; designation of resident for service of process and notice.
1052. Trademarks registrable on principal register; concurrent registration.
1053. Service marks registrable.
1054. Collective marks and certification marks registrable.

* * * * * * *

§ 1052. Trademarks registrable on principal register; concurrent registration

No trademark by which the goods of the applicant may be distinguished from the goods of others shall be refused registration on the principal register on account of its nature unless it—

(a) Consists of or comprises immoral, deceptive, or scandalous matter; or matter which may disparage or falsely suggest a connection with persons, living or dead, institutions, beliefs, or national symbols, or bring them into contempt, or disrepute.

* * * * * * *

(d) Consists of or comprises a mark which so resembles a mark registered in the Patent and Trademark Office or a mark or trade name previously used in the United States by another and not

abandoned, as to be likely, when applied to the goods of the applicant, to cause confusion, or to cause mistake, or to deceive: *Provided*, That when the Commissioner determines that confusion, mistake, or deception is not likely to result from the continued use by more than one person of the same or similar marks under conditions and limitations as to the mode or place of use of the marks or the goods in connection with which such marks are used, concurrent registrations may be issued to such persons when they have become entitled to use such marks as a result of their concurrent lawful use in commerce prior to (i) the earliest of the filing dates of the applications pending or of any registration issued under this chapter; or (ii) July 5, 1947, in the case of registrations previously issued under the Act of March 3, 1881, or February 20, 1905, and continuing in full force and effect on that date; or (iii) July 5, 1947, in the case of applications filed under the Act of February 20, 1905, and registered after July 5, 1947. *Use prior to any filing date of a pending application or registration shall not be required when the owner of such application or registration consents to the grant of a concurrent registration to the applicant.* Concurrent registrations may also be issued by the Commissioner when a court of competent jurisdiction has finally determined that more than one person is entitled to use the same or similar marks in commerce. In issuing concurrent registrations, the Commissioners shall prescribe conditions and limitations as to the mode or place of use of the mark or the goods in connection with which such mark is registered to the respective persons.

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Calendar No. 183

99TH CONGRESS *1st Session*	SENATE	REPORT 99-154

REFUGEE ASSISTANCE EXTENSION ACT OF 1985

REPORT

OF THE

COMMITTEE ON THE JUDICIARY UNITED STATES SENATE

ON

S. 1262

OCTOBER 8 (legislative day, SEPTEMBER 30), 1985.—Ordered to be printed

U.S. GOVERNMENT PRINTING OFFICE
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CONTENTS

	Page
Purpose of the bill	1
Need for legislation	1
History of legislation:	
97th Congress	2
98th Congress	2
99th Congress	3
Background	4
Analysis of the legislation:	
Authorization period and level	5
Social services	5
Reception and placement grants	6
Cash and medical assistance	7
Use of per capita grants	9
Reimbursement of State and local expenditures for the incarceration of certain aliens	10
Section-by-section analysis	10
Department position	11
Regulatory impact statement	11
Cost estimate	12
Changes in existing law	14

Calendar No. 183

99TH CONGRESS
1st Session

SENATE

REPORT
99-154

REFUGEE ASSISTANCE EXTENSION ACT OF 1985

OCTOBER 8 (legislative day, SEPTEMBER 30), 1985.—Ordered to be printed

Mr. THURMOND, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany S. 1262]

The Committee on the Judiciary, to which was referred the bill (S. 1262) to amend the Immigration and Nationality Act to extend for two years the authorization of appropriations for refugee assistance, and for other purposes, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

PURPOSE OF THE BILL

The purpose of the bill is to extend for 2 years the funding authorization for domestic resettlement activities under the Refugee Act of 1980.

NEED FOR LEGISLATION

As signed into law in March 1980, the Refugee Act provided for a 3 year authorization of appropriations for the domestic resettlement of refugees. During the 97th congress, legislation was enacted (Public Law 97-363) reauthorizing the domestic resettlement program for fiscal year 1983. Public Law 98-151 continued funds at 1983 levels for fiscal year 1984, and Public Law 98-473 continued those funds for fiscal year 1985. This bill would extend that authorization for fiscal years 1986 and 1987.

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History of Legislation

THE 97TH CONGRESS

The Subcommittee on Immigration and Refugee Policy held 4 days of hearings on the U.S. refugee program during the 97th Congress. On September 13, 1982, it specifically considered the Reauthorization of the Refugee Act of 1980, H.R. 5879. After the series of hearings and favorable recommendation by the Senate Judiciary Committee on September 28, 1982, the Senate passed H.R. 5879 on October 1, 1982. It became public law (Public Law 97-363) on October 25, 1982.

The legislation authorized for 1 year such sums as were necessary for the extension of refugee assistance, except for the specific amounts of $100 million for social services and $14 million for health screening and initial medical treatment. A 1 year reauthorization was deemed necessary to allow the Subcommittee to revisit the program to address certain concerns about the domestic refugee resettlement program and to review newly available information about that program.

The legislation also placed new conditions on the distribution and receipt of refugee resettlement funds. A greater emphasis was put on the coordination of resettlement activities between Federal, State, and local governments and voluntary agencies. A new cooperative agreement between volutary agencies and the State Department's Bureau for Refugee Programs was devised, along with requirements to monitor those agreements. The increased use of social service programs was emphasized to promote early employment and refugee self-sufficiency. The line item for social services required that such programs be aimed at employment development services and English language training.

In addition, the legislation denied refugee cash assistance to full-time students and strengthened the penalties against refugees who declined job offers or refused appropriate social service programs. Reporting requirements were placed on voluntary agencies to notify States of refugees on welfare. To dilute the impact on areas of heavy refugee concentration, a plan was required that would avoid the initial resettlement of refugees in those areas with large refugee populations.

THE 98TH CONGRESS

During 1983, the Subcommittee held 4 days of hearings on the number of refugees to be admitted during fiscal year 1984 and on the reauthorization of the refugee resettlement program. On June 20 and 27, 1983, testimony was heard from 15 witnesses concerning the reauthorization of the Refugee Act of 1980. These witnesses included: Ambassador Eugene Douglas, U.S. Coordinator for Refugee Affairs; Alan Nelson, Commissioner of the Immigration and Naturalization Service; Phillip Hawkes, Director of the Office of Refugee Resettlement in the Department of Health and Human Services; James Purcell, Director of the Bureau for Refugee Programs in the Department of State; and representatives of State and local refugee programs, voluntary agencies, private organizations, and refugee mutual assistance associations.

The main topic of the hearings was the high cost and many inefficiencies of refugee resettlement program, and the efforts to correct that situation. The administration introduced its proposal of per capita grants to provide assistance for refugees categorically ineligible (under AFDC, Medicaid, or SSI) for cash or medical assistance and to support State or community programs aimed at promoting early refugee self-sufficiency. The administration contended that such an approach would provide States a desirable flexibility in helping refugees attain early self-sufficiency. Representatives of State and local governments and voluntary agencies opposed the per capita grant approach, however, claiming that it could lead to a lessening of Federal responsibility in refugee resettlement, and could increase secondary migration.

No action by either body was taken before authority for funding under the Refugee Act of 1980 expired on September 30, 1983. To continue funds to the program, Public Law 98-107 was enacted on October 1, 1983, with an expiration date of November 30, 1983. On November 14, 1983, the House of Representatives passed H.R. 3729, which reauthorized refugee program funds for 2 years. However, the Senate did not act on reauthorization legislation, and a continuing resolution (Public Law 98-151) signed on November 14, 1983, continued funds for the refugee program until September 30, 1984. The continuing resolution maintained funds at the Fiscal Year 1983 level and specifically prohibited the use of per capita grants in the Federal reimbursement of State and local costs incurred from the resettlement of refugees.

On June 12, 1984, the Subcommittee on Immigration and Refugee Policy unanimously approved H.R. 3729, with seven amendments, and reported it to the Judiciary Committee with a favorable recommendation. On June 14, 1984, the Full Committee by voice vote ordered the bill, H.R. 3729, reported to the Senate with a recommendation for favorable action. No final action was taken on H.R. 3729 in the Senate.

THE 99TH CONGRESS

On June 7, 1985, Senator Simpson and Senator Kennedy jointly introduced S. 1262, which would reauthorize funds for the domestic refugee resettlement program for 2 years. The bill was nearly identical to the prior congress's House bill, H.R. 3729, except for the deletion of the Fish Demonstration Project—which was enacted into law through the Continuing Resolution—and inclusion of new provisions regarding refugee use of Aid to Families with Dependent Children (AFDC) and Medicaid. Because of the nearly indentical provisions of S. 1262, no new hearings were held in 1985 on the reauthorization bill. However, on September 17, 1985, at the Annual Refugee Consultation, the Subcommittee reviewed testimony regarding the progress of the domestic resettlement program, and specific questions were asked regarding the refugee welfare dependency rate, the targeted assistance program, and the Fish Demonstration Project. Witnesses at that hearing included the Secretary of State, the U.S. Coordinator for Refugee Affairs, the Commissioner of the Immigration and Naturalization Service, and the

Director of the Office of Refugee Resettlement in the Department of Health and Human Services.

Senator Simpson and Senator Kennedy requested that the Subcommittee on Immigration and Refugee Policy be discharged of the bill and the Committee on the Judiciary favorably reported the bill without amendment by a voice vote on June 13, 1985.

Background

Title II of the Refugee Act of 1980 defines the term "refugee", refers to a "normal flow" of 50,000 refugees annually, and establishes the framework for selecting those refugees to be admitted to the United States. In accordance with the Act, the President determines the number of refugees to be admitted during each fiscal year after consultations between Executive Branch officials and Congress.

Title III sets forth the mandates of the U.S. Coordinator for Refugee Affairs and provides a detailed system for the resettlement of refugees in the United States.

The assistance provided under the Refugee Act takes several forms. First, the Act authorizes the Office of Refugee Resettlement to reimburse States for 100 percent of their costs in providing cash assistance and medical assistance to refugees in the United States for 3 years or less.

Second, the Office of Refugee Resettlement provides funding to States for a broad range of social services to refugees. Permissible services include any service allowable in a State's plan under title XX of the Social Security Act, as well as a number of services specifically identified in policy instructions to the States. These specific services include English language training, job development and placement, career counseling, vocational training, day care for children to permit enrollment of parents in training programs, and translation and interpreter services.

Third, under the authority of the Refuge Act, funds have been appropriated for overseas monitoring of health screening and immunization of Southeast Asian refugees prior to their entry into the country, for port-of-entry inspection and health department notification, and for health assessment after the refugees arrive at their destination.

Finally, the Refugee Act authorizes the Office of Refugee Resettlement to provide special educational serices to refugee children in elementary and secondary schools where a demonstrated need has been shown.

The Refugee Act establishes a specific statutory procedure for the admission of refugees and define the consultative role of Congress in that process. Below is a table summarizing the refugee admissions since enactment of the Refugee Act:

	Proposed admissions	Presidential determination	Actual admissions
Fiscal year:			
1981	217,000	217,000	159,000
1982	173,000	140,000	97,000
1983	98,000	90,000	61,681

	Proposed admissions	Presidential determination	Actual admissions
1984	72,000	72,000	71,113
1985	70,000	70,000	[1] 68,100

[1] Estimated

Analysis of the Legislation

AUTHORIZATION PERIOD AND LEVEL

The bill provides for a 2-year extension of the authorization of appropriations for the domestic resettlement of refugees.

For each year, the authorization is for such sums as may be necessary for all forms of refugee assistance.

The bill, by adopting a "such sums" approach toward the refugee program's funding, recognizes the difficulty of assessing the proper funding level for refugee assistance costs. With regard to cash and medical reimbursement costs, there are two important variables which detemine this level: refugee welfare dependency rates and the number of refugees admitted. While dependency rates and admissions levels have become more constant in the last 3 years, the Committee still believes that maximum flexibility should be retained for the purposes of State reimbursement. With regard to other refugee program costs, the Committee believes the Appropriations Committee can more accurately set the funding levels, since prior lone items for social services and medical screening were last set in 1982, when refugee flows were much higher.

SOCIAL SERVICES

The bill for the first time does not provide a line item authorization of refugee social services. Such services include English language training, job training, and job placement. Despite deletion of the line item, the Committee wishes to reiterate its belief that the provision of such services is a fundamental element of the attempt to prevent refugee dependency on cash or medical assistance.

In its report on the Refugee Assistance Amendments of 1982 (S. Rept. 97-638), the Committee rejected an administration proposal to allocate social service funds according to the anticipated number of refugee arrivals. However, the Committee also believes that distributing funds on the basis of refugee populations regardless of the date of entry is similarly inappropriate. Such a distribution would fail to take into account those refugees who have successfully integrated into the workforce and would belie the transitional nature of the domestic resettlement program.

Recognizing that the social serivce needs of many refugees cannot be sufficiently addressed on a 1-year period, the Committee recommends that budgeting be based on a 3-year period—specifically the past 3 fiscal years. This would correspond with the 3-year eligibility for cash and medical assitance prescribed by the Act and would be in accord with the type of allocation formula for social service funds which the Office of Refugee Resettlement has used. States would continue to have the flexibility provided by the Act to use some portion of the funds for services of refugees who had been

in the U.S. for longer periods of time. In addition, the Committee recommends that a small portion of social service funds be reserved for certain groups of time-ineligible refugees who experience particular difficulty in achieving employment and self-sufficiency—such as the Hmong in California.

RECEPTION AND PLACEMENT GRANTS

The Bureau of Refugee Programs in the Department of State provides voluntary agencies with a "Reception and Placement" grant for each refugee they resettle. Under the Refugee Assistance Amendments of 1982, voluntary agencies were required to enter into a cooperative agreement with the Bureau for each grant received, and the Bureau was required to monitor the adherence of the voluntary agencies to that contract. The Committee firmly supports this approach, and has added the following conditions to strengthen the cooperative agreement: voluntary agencies will supply the Bureau with quarterly performance and financial status reports; such agencies will notify the appropriate local welfare agency when they learn that a refugee has received a job offer; and upon request of a local welfare office, the voluntary agencies will provide such office with documentation describing the amount of cash or other resources that the voluntary agencies have provided or will provide to the refugee. The Committee intends that noncash resources be quantified to assist local welfare officials in making eligibility determinations.

The current cooperative agreement stipulates that the voluntary agencies "recognize that the ultimate goal of services performed under this agreement is to assist refugees to become self-sufficient through employment as soon as feasible after arrival in the United States." Unfortunately, this agreement, the substantial funding of social service programs, and a decrease in refugee admissions have not improved the refugee welfare dependency rate. Nationally, the dependency rate is 54 percent for those refugees who entered in the last 3 years, up two percentage points from fiscal year 1984. A March, 1983, GAO report found that 88 percent of those refugees on welfare (in the group sampled) applied for assistance within 30 days of arrival. It is evident that some voluntary agencies bear a major responsibility for this less-than satisfactory performance.

Accordingly, the bill requires, as term of the grant, that a voluntary agency "fulfill its responsibility to provide for the basic needs of each refugee resettled." The Committee intends that "basic needs" include food, clothing, shelter, transportation for job interviews, and training for the first 90 days of each refugee's resettlement. The bill also requires voluntary agencies to develop and submit a resettlement plan for each refugee resettled and to monitor that plan for 1 year. With respect to both of the above requirements, the Committee expects that a violation of these requirements would give the Bureau of Refugee Programs cause to consider whether future contracts should be awarded to that voluntary agency.

The bill also requires that the Bureau of Refugee Programs review a voluntary agency's performance based on, among other criteria, the agency's "efforts to reduce welfare dependency among

refugees resettled by that agency." With regard to this criterion, the Committee intends a specific reference to the functional responsibilities identified in subsection 412(b)(7) and discussed above. It is understood that in some States and counties, organizations other than voluntary agencies have been funded to perform "case management" with the intent to reduce welfare dependency. States are encouraged to recognize the new responsibilities of voluntary agencies under Reception and Placement Grant contracts in order to maximize the impact of their efforts to assist refugees in moving toward self-sufficiency during the period specified in such contracts.

The Committee expects that the Bureau of Refugee Programs would evaluate voluntary agency resettlement plans through onsite monitoring as well as periodic review of documentation available at national headquarters offices. Step-by-step progress in fulfilling the plan and the timelines of referrals to employment-related services will be assessed, as well as the evidence of notification to the local welfare office of all relevant employment and assistance or income information necessary to a determination of welfare eligibility. The Bureau should also require periodic statistical reports from the voluntary agencies to identify the number of employable refugees and their employment status at the end of the period for which the agencies are funded (not less than 90 days) to monitor refugee progress in achieving self-sufficiency.

CASH AND MEDICAL ASSISTANCE

Despite a number of positive steps taken during the last few years to address the problem of high utilization of cash assistance by refugees, the Committee is deeply concerned that the rate has consistently remained at about 54 percent of those refugees who have been in the United States less than 3 years.

Under current provisions, needy refugees who qualify for the program of aid to families with dependent children (AFDC) are included in that program. Those who meet the income and resources requirements for AFDC, but not the family-composition requirements, are eligible, during their first 18 months in the United States for a separate program of refugee cash assistance (RCA), and, during their second 18 months, such refugees are eligible for existing State or local general assistance (GA) programs. Full Federal funding is provided for assistance offered under these programs until a refugee has completed 36 months in the United States Federal funding for time-eligible refugees receiving AFDC is a combination of the regular Federal AFDC funding under title IV-A of the Social Security Act and of Federal refugee funds which cover what would normally be the State share of AFDC costs during a refugee's first 36 months. Funding for RCA during a refugee's first 18 months and for GA during the second 18 months is provided entirely from Federal refugee funds. Full Federal funding is also provided for medical assistance to needy refugees during their first 36 months. Depending on the type of case, medical assistance is provided through the medicaid program, the refugee medical assistance (RMA) program, or a GA medical assistance program.

As experience has been gained under the Refugee Act by States and the Federal government, it has become evident that while the AFDC program satisfactorily provides assistance to needy refugees, it is, in a number of respects, inappropriate to advancing the goal of helping refugees move toward employment and self-support during their initial years in the United States.

The problem is especially severe with respect to the unemployed-parent (UP) segment of the AFDC program. AFDC-UP is a program, existing in about half of the States, which provides assistance to two-parent families with minor children where need results from the unemployment of the principal wage earner. Under AFDC-UP rules, if a recipient is employed 100 or more hours per month, all eligibility for assistance ends. In addition, if a job offer would result in income lower than the family's welfare grant, acceptance of the offer cannot be required. These provisions are not well suited to large refugee families in which a refugee could expect initially to obtain work only at or near the minimum wage. In effect, these provisions mean that a refugee family which qualifies for AFDC-UP is likely to remain on full assistance for an indefinite period of time—funded entirely by the Federal Government during the first 3 years and thereafter by a combination of Federal and State funds under regular AFDC funding.

Another problem which has affected refugees in some States, in both the AFDC-UP program and the basic AFDC program (one-parent families with minor children) has been that the work incentive (WIN) program—to which AFDC recipients are referred for services, training, and employment—is not designed to address the special needs of refugees. Many refugee AFDC recipients have simply been considered "unemployable" rather than being referred to—and required to participate in—refugee-specific employment services and training.

Congress included specific requirements for refugee cash assistance in the Refugee Act of 1980 and strengthened the requirements in the Refugee Assistance Amendments of 1982. It provided that, as a condition of receipt of such assistance, employable refugees must participate in appropriate services and training designed specifically to meet their needs and imposed statutory sanctions for refusal to participate or to accept appropriate job offers.

The refugee cash assistance (RCA) program is structured so that a refugee can be required to accept a job and, during the period of time-eligibility, can receive a supplementary assistance payment if the wage is not sufficient to match the family's full assistance payment. This flexible approach provides employment-related services tailored to the needs of refugees, facilitates refugees' initial entry into the U.S. labor market—enabling them to gain U.S. job experience and acquire additional skills—and permits assistance payments to be reduced to the degree that needs are met from gainful employment.

The assurance of such flexibility and of the receipt of appropriate services is also needed with respect to the refugee families who are currently receiving assistance under the AFDC program. AFDC recipients comprise the largest portion, approximately 63 percent, of those time-eligible refugees who are receiving cash assistance. As

such, they are subject to the procedures of the AFDC program rather than the requirements and benefits of the Refugee Act.

The Committee bill addresses the need for a new approach by providing that, during the first 36 months in the United States, refugees who would otherwise be eligible for AFDC on the basis of income, resources, and family composition, will instead be eligible for refugee cash and medical assistance. This provision will apply to refugees entering the United States after the date of enactment.

The Committee intends, through this provision, that these refugees, who would otherwise receive AFDC, will be eligible for refugee assistance according to the same need standards and payment levels that apply in the AFDC program in the State in which the refugee resides and the same "disregards" which apply in AFDC, including the disregard of the first $30 of earned income plus one-third of the remainder. Similarly, these refugees will be eligible for refugee medical assistance according to the same eligibility standards that apply to the eligibility of AFDC recipients for medicaid, including the provision of refugee medical assistance for an additional period of 9 or 15 months (depending on the State's AFDC plan) following the cessation of cash assistance when the conditions of section 402(a)(37) of the Social Security Act have been met, or for as much of such period as remains within the refugee's 36-month period of time-eligibility for refugee assistance. These standards will ensure that a family is not economically disadvantaged by being assisted under the refugee program rather than AFDC.

Federal funding for cash and medical assistance to these refugees will be provided entirely through the refugee program, rather than partly through AFDC funds and partly through refugee funds, as at present. However, the increase in refugee program requirements will be offset by an identical reduction in the requirements for AFDC and Medicaid. Therefore, this provision is initially budget neutral, and, in future years, it is expected to result in reduced need for Federal funds resulting from more positive achievements in refugee employment than can be anticipated under current law.

The Committee notes that this provision will not preclude the potential for similar projects for refugees on a demonstration basis. Projects are currently in operation in two States, California and Oregon, and interest in additional projects has been expressed by both public and private agencies. While such projects may be expected, in a few years, to shed new light on effective ways of helping refugees, the Committee is convinced that the barriers for refugees inherent in the AFDC program have become so evident and are so formidable that now is the time to turn this situation around. Continued high rates of refugee welfare dependency are harmful to individual refugees and unhealthy for the domestic resettlement program.

USE OF PER CAPITA GRANTS

The administration proposed the use of per capita grants to fund the domestic resettlement program for fiscal year 1984, asserting that such an approach would increase State funding flexibility without decreasing the overall amount of Federal reimbursement. Representatives of State and local governments and voluntary

agencies vigorously opposed the proposal, claiming that such an approach would be an abrogation of Federal responsibility and could politicize the distribution of funds within each State.

The Committee believes that, in light of the almost universal objection to the proposal, per capita grant funding should not be imposed on any State during the term of this reauthorization, unless a State specifically requests reimbursement in the form of a per capita grant. The Committee emphasizes that, in the case of a State requesting a per capita grant, such a grant may be used for the funding of medical screening, social services, and educational aid to refugee children.

REIMBURSEMENT OF STATE AND LOCAL EXPENDITURES FOR THE INCARCERATION OF CERTAIN ALIENS

In the Spring of 1980, approximately 125,000 Cuban nationals entered the United States in a massive boatlift from Cuba. Because of the magnitude of the "Mariel influx" and the brief time period involved, the Federal Government was unable to conduct a thorough screening of many of these "entrants" prior to their release into the community.

During hearings before this Committee in 1980, it was learned that a large, but undetermined, number of entrants were released from mental health institutions and prisons and then transported to Mariel for the voyage to this country. A small number of these individuals still remain in Federal custody.

An additional number of entrants who were processed in 1980 are also incarcerated in State and local correctional facilities for non-Federal criminal offenses. This has had a disproportionate impact on certain States, such as Florida and New York, where substantial numbers of Cuban entrants reside. Because the Federal Government did not prevent their initial entry nor properly screen them upon arrival here, it bears some degree of financial responsibility for the costs of incarcerating them.

Therefore, the bill authorizes a 2-year program to reimburse States and counties for the costs of confining Cuban entrants. Since estimates as to the number of incarcerated entrants are not readily available, the Committee felt it was appropriate to authorize "such sums as may be necessary." The amendment also restricts the spending authority of the Attorney General to "such amounts as may be provided in advance in appropriation Acts."

In the event the total costs of a State and local government are not met by appropriated funds, each government's share shall be "ratably reduced."

SECTION-BY-SECTION ANALYSIS

Section 1: Short title, "Refugee Assistance Extension Act of 1985."

Section 2: Provides a 2-year authorization of appropriations of "such sums as may be necessary" for the domestic resettlement program.

Section 3: Requires, as a condition of the Reception and Placement (R&P) grant, that a voluntary agency (VOLAG) do the following: (1) submit quarterly performance and financial status reports

to the Bureau of Refugee Programs, (2) notify the local public welfare agency whenever it learns that a refugee has been offered employment, and provide—upon request—to such agency information concerning the assistance the VOLAG has directly supplied to that refugee, (3) notify the local public health agency whenever it determines that a refugee has a medical condition affecting the public health and requiring treatment, and (4) be responsible for the basic needs (including food, clothing, shelter, and transportation for job interviews and training) of each refugee, and develop and monitor an early employment resettlement plan for 1 year. The section also requires that the Bureau of Refugee Programs establish certain performance criteria to be used when awarding R&P grants or contracts.

Section 4: Precludes refugee eligibility for AFDC and medicaid and instead make refugee eligible for refugee cash and medical assistance during the refugee's first 36 months in this country. The section also specifies that a refugee who refuses an appropriate offer of employment (as defined by the VOLAG or local employment service), or who refuses to go to a job interview arranged by the VOLAG or employment service, or who refuses to participate in available social service programs, shall be declared ineligible (after an opportunity for a hearing) for cash assistance for 3 months for the first refusal and 6 months for any subsequent refusal; and requires a State or locality to consider the recommendations and in-kind assistance of VOLAG's when providing cash assistance to refugees.

Section 5: Limits the class of refugees who are covered by the annual report (as required by section 413(a)(2)(A) of the INA) to those who have been in the country 5 or fewer years.

Section 6: Prohibits the imposition of per capita grant funding on any State for reimbursement of cash and medical expenses, social services, medical screening, or aid to refugee children during the term of the authorization, unless a State specifically requests such funding.

Section 7: Directs the Attorney General to reimburse States and counties (subject to available appropriations) for their costs incurred due to the incarceration, during fiscal year 1986 and fiscal year 1987, of Mariel Cubans who entered the United States during 1980.

Department Position

The administration supports the reauthorization of the Refugee Act of 1980. However, the administration recommends a single sum authorization for fiscal year 1986 and a "such sums" authorization for fiscal year 1987, as provided by S. 1261, which was introduced by request for the administration.

Regulatory Impact Statement

In compliance with subsection 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee finds that no significant regulatory impact as defined by that subsection will result from the enactment of S. 1262.

COST ESTIMATE

In accordance with section 252(a) of the Legislative Reorganization Act (2 U.S.C. 190(j)), the Committee estimates that there will be added costs due to this act and adopts the cost estimate prepared by the Congressional Budget Office (CBO), set forth below.

On September 27, 1985, the following opinion was received from the CBO:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, September 27, 1985.

Hon. STROM THURMOND,
Chairman, Committee on the Judiciary,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the attached cost estimate for S. 1262, the Refugee Assistance Extension Act of 1985, as ordered reported by the Senate Judiciary Committee, June 13, 1985.

Should the Committee so desire, we would be pleased to provide further details on this estimate.

With best wishes,

Sincerely,

RUDOLPH G. PENNER.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

1. Bill number: S. 1262

2. Bill title: Refugee Assistance Extension Act of 1985.

3. Bill status: As ordered reported by the Senate Judiciary Committee on June 13, 1985.

4. Bill purpose: This bill authorizes a two-year extension of current refugee programs and authorizes the Attorney General to reimburse states and counties for costs associated with the incarceration of Cuban refugees who were admitted to the United States in 1980 and are jailed in state and county prisons.

5. Estimated cost to the Federal Government:

[By fiscal year, in millions of dollars]

	1986	1987	1988	1989
Refugees:				
Estimated authorization level	560	578		
Estimated outlays	448	558	115	17
Incarcerated Cubans:				
Estimated authorization level	31	32		
Estimated outlays	31	32		
AFDC:				
Budget authority	−57	−58		
Outlays	−57	−58		
Medicaid:				
Budget authority	−42	−44		
Outlays	−42	−44		
Net budget impact:				
Authorization level/budget authority	492	508		
Outlays	380	488	115	17

Basis for estimate

The refugee program currently reimburses states for their share of costs for AFDC and Medicaid, as well as the costs for refugee cash and medical assistance. This legislation would make refugees ineligible for AFDC and Medicaid. These refugees would then be eligible for refugee cash and medical assistance such that any savings that would accrue to the federal government in AFDC and Medicaid would show up as a cost under the refugee account. Savings in AFDC would be $57 million in fiscal year 1986, and $58 million in fiscal year 1987. Savings in Medicaid would be $42 million in fiscal year 1986, and $44 million in fiscal year 1987.

The estimated authorization level for refugee cash and medical assistance is based on projected average benefits and on projections of the number of refugees qualified to participate in the various programs. Authorization levels are based on the Administration's current ceilings for 70,000 refugee arrivals in 1985, 68,000 in 1986, and 58,000 in 1987. Historical data indicates that about 53 percent of these refugees will require some type of assistance. The Administration's estimated dependency rate was 54 percent in 1982, 53 percent in 1983, and 54 percent in 1984.

The preventive health, targeted assistance, education, and federal administration costs are based on the 1985 appropriation level adjusted by the CBO projection of cost increases.

Estimated outlays for the refugee programs assume full appropriation of authorization levels and assume an 80 percent spend-out rate in the first year, 17 percent in the second year, and the remainder in the third year.

The estimate of $31 million in 1986 and $32 million in 1987 for reimbursement to states for the incarceration of certain Cuban refugees is based on information obtained from the Immigration and Naturalization Service (INS), the Bureau of Prisons, and state and county corrections officials. The INS estimates that about 1,700 Cuban nationals currently in state prisons meet the qualifications specified in the bill. In addition, it is estimated that at least 800 such prisoners are held in county facilities—for a total of approximately 2,500 prisoners. (The estimate of county prisoners is very uncertain, however, Dade County, Florida officials estimate that there are 500 qualifying Cuban nationals in their facilities alone.) Based in information from the Department of Justice and from state and county corrections officials, it is estimated that an average reimbursement per prisoner would be approximately $12,500 in 1986 and $13,000 in 1987. This estimate assumes full appropriation of the necessary amounts. If less is appropriated, the payment per prisoner would be reduced proportionately.

6. Estimated cost to State and local governments: Assuming full appropriation of the authorizations, this bill would reimburse state and local governments $516 million in 1986 and $532 million in 1987. These reimbursements would arise from direct payments to state and local governments for cash and medical assistance and for costs of incarceration of some Cuban nationals. Reimbursements would also occur from grants to states for targeted assistance and education assistance.

7. Estimate comparison: None.

8. Previous CBO estimate: None.
9. Estimate prepared by: Debra Goldberg and Anne Manley.
10. Estimate approved by: C.G. Nuckols (for James L. Blum, Assistant Director for Budget Analysis).

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing laws proposed to be made by S. 1262 are shown as follows: Existing law to be omitted is enclosed in black brackets, new matter is printed in italic, and existing law in which no change is proposed is shown in roman.

UNITED STATES CODE

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Title 8—Aliens and Nationality

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CHAPTER 12.—IMMIGRATION AND NATIONALITY

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SUBCHAPTER IV—REFUGEE ASSISTANCE

Sec.
1521. Office of Refugee Resettlement; establishment; appointment of Director; functions.
1522. Authorization for programs for domestic resettlement of and assistance to refugees.
(a) Conditions and considerations.
(b) Program and initial resettlement.
(c) Project grants and contracts for services for refugees.
(d) Assistance for refugee children.
(e) Cash assistance and medical assistance for refugees.
1523. Congressional reports.
1524. Authorization of appropriations.

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§ 1522. Authorization for programs for domestic resettlement of and assistance to refugees

(a) Conditions and considerations

* * * * * * *

(4)*(A)* No grant or contract may be awarded under this section unless an appropriate proposal and application (including a description of the agency's ability to perform the services specified in the proposal) are submitted to, and approved by, the appropriate administering official. Grants and contracts under this section shall be made to those agencies which the appropriate administering official determines can best perform the services. Payments may be made for activities authorized under this subchapter in advance or by way of reimbursement. In carrying out this section, the

Director, the Secretary of State, and any such other appropriate administering official are authorized—

[(A)] *(i)* to make loans, and

[(B)] *(ii)* to accept and use money, funds, property, and services of any kind made available by gift, devise, bequest, grant, or otherwise for the purpose of carrying out this section.

(B)(i) Except as provided in clause (ii), no funds may be made available under this chapter (other than under subsection (b)(1)) to States or political subdivisions in the form of block grants, per capita grants, or similar consolidated grants or contracts. Such funds shall be made available under separate grants or contracts for medical screening and initial medical treatment under subsection (b)(5), for services for refugees under subsection (c), and for assistance for refugee children under subsection (d)(2). The Director may not delegate to a State or political subdivision his authority to review or approve grants or contracts under this chapter or the terms under which such grants or contracts are made.

(ii) Notwithstanding the provisions of clause (i), funds made available under this chapter (other than under subsection (b)(1)) may be made available to a State in the form of per capita grants if such State requests such grants and if such grants are used for demonstration projects.

* * * * * * *

(b) Program of initial resettlement

(1)(A) For—

(i) fiscal year 1980 and 1981, the Secretary of State is authorized, and

(ii) fiscal year 1982 and succeeding fiscal years, the Director (except as provided in subparagraph (B) is authorized,

to make grants to, and contracts with, public or private nonprofit agencies for initial resettlement (including initial reception and placement with sponsors) of refugees in the United States. Grants to, or contracts with, private nonprofit voluntary agencies under this paragraph shall be made consistent with the objectives of this subchapter, taking into account the different resettlement approaches and practices of such agencies. Resettlement assistance under this paragraph shall be provided in coordination with the Director's provision of other assistance under this subchapter. Funds provided to agencies under such grants and contracts may only be obligated or expended during the fiscal year in which they are provided (or the subsequent fiscal year or such subsequent fiscal period as the Federal contracting agency may approve) to carry out the puposes of this subsection. [Such grants and contracts shall provide that the agency shall provide (directly or through its local affiliate) notice to the appropriate county or other local welfare office at the time that the agency becomes aware that a refugee is offered employment and provide notice to the refugee that such notice has been provided. Such grants and contracts shall also provide that the agency shall assure that refugees, known to the agency as having been identified pursuants to paragraph (4)(B) as having medical conditions affecting the public health and requiring treat-

ment, report to the appropriate county or other health agency upon their resettlement in an areal.]

* * * * * * *

(7) Each grant or contract with an agency under paragraph (1) shall require the agency—

"(A) to provide quarterly performance and financial status reports to the Federal agency administering paragraph (1);

(B)(i) to provide, directly or through its local affiliate, notice to the appropriate county or other local welfare office at the time that the agency becomes aware that a refugee is offered employment and to provide notice to the refugee that such notice has been provided and

(ii) upon request of such a welfare office to which a refugee has applied for cash assistance, to furnish that office with documentation respecting any cash or other resources provided directly by the agency to the refugee under this subsection;

(C) to assure that refugees, known to the agency as having been identified pursuant to paragraph (4)(B) as having medical conditions affecting the public health and requiring treatment, report to the appropriate county or other health agency upon their resettlement in an area; and

(D) to fulfill its responsibility to provide for the basic needs (including food, clothing, shelter, and transportation for job interviews and training) of each refugee resettled and to develop and implement a resettlement plan including the early employment of each refugee resettled, and to monitor the implementation of such plan for one year after the date such refugee was admitted to the United States.

(8) The Federal agency administering paragraph (1) shall establish criteria for the performance of agencies under grants and contracts under that paragraph, and shall include criteria relating to an agency's—

(A) efforts to reduce welfare dependency among refugees resettled by that agency,

(B) collection of travel loans made to refugees resettled by that agency for travel to the United States,

(C) arranging for effective local sponsorship and other non-public assistance for refugees resettled by that agency,

(D) cooperation with refugee mutual assistance associations, local social service providers, health agencies, and welfare offices,

(E) compliance with the guidelines established by the Director for the placement and resettlement of refugees within the United States, and

(F) compliance with other requirements contained in the grant or contract, including the reporting and other requirements under subsection(b)(7).

The Federal administering agency shall use the criteria in the process of awarding or renewing grants and contracts under paragraph (1).

* * * * * * *

(e) Cash assistance and medical assistance for refugees

(1)*(A)* The Director is authorized to provide assistance, reimbursement to States, and grants to, and contracts with public or private nonprofit agencies for 100 per centum of the cash assistance and medical assistance provided to any refugee during the thirty-six month period beginning with the first month in which such refugee has entered the United States and for the identifiable and reasonable administrative costs of providing this assistance.

(B) During such thirty-six month period, a refugee who would, on the basis of income, resources, and family composition, be eligible for aid to families with dependent children under part A of title IV of the Social Security Act or for medical assistance under title XIX of that Act shall not be eligible for those programs and shall, instead, be eligible for cash and medical assistance under this subsection.

(2)(A) Cash assistance provided under this subsection to an employable refugee is conditioned, except for good cause shown—

(i) on the refugee's registration with an appropriate agency providing employment services described in subsection (c)(1) of this section, or, if there is no such agency available, with an appropriate State or local employment service;

(ii) on the refugee's participation in any available and appropriate social service program (funded under subsection (c) of this section) providing job or language training in the area in which the refugee resides; and

(iii) on the refugee's acceptance of appropriate offers of employment.

[Such cash assistance provided to such a refugee shall be terminated (after opportunity for an administrative hearing) with the month in which the refugee refuses such an appropriate offer of employment or refuses to participate in such an available and appropriate social service program.]

In the case of a refugee who refuses an offer of employment which has been determined to be appropriate either by the agency responsible for the intitial resettlement of the refugee under subsection (b) or by the appropriate State or local employment service, who refuses to go to a job interview which has been arranged through such agency or service, or who refuses to participate in a social service program referred to in clause (ii) which such agency or service determines to be available and appropriate, cash assistance to the refugee shall be terminated (after opportunity for an adminstrative hearing) for a period of three months (for the first such refusal) or for a period of six months (for any subsequent refusal).

* * * * * * *

(8) In its provision of assistance to refugees, a State or political subdivision shall consider the recommendations of, and assistance provided by, agencies with grants or contracts under subsection (b)(1).

(f)(1) ASSISTANCE TO STATES AND COUNTIES FOR INCARCERATION OF CERTAIN CUBAN NATIONALS.—The Attorney General shall pay compensation to States and to counties for costs incurred by the States and counties to confine in prisons, during the fiscal year for which such payment is made, nationals of Cuba who—

(A) were allowed by the Attorney General to enter the United States in 1980,

(B) after such entry committed any violation of State or county law for which a term of imprisonment was imposed, and

(C) at the time of such entry and such violation were not aliens lawfully admitted to the United States—

(i) for permanent residence, or

(ii) under the terms of an immigrant visa or a nonimmigrant visa issued,

under this Act.

(2) For a State or county to be eligible to receive compensation under this subsection, the chief executive officer of such State or county shall submit to the Attorney General, in accordance with rules to be issued by the Attorney General, an application containing—

(A) the number and names of the Cuban nationals with respect to whom such State or county is entitled to such compensation, and

(B) such other information as the Attorney General may require.

(3) For a fiscal year the Attorney General shall pay the costs described in paragraph (1) to each State and county determined by the Attorney General to be eligible under paragraph (2), except that if the amounts appropriated for such fiscal year to carry out this subsection are insufficient to cover all such payments, each of such payments shall be ratably reduced so that the total of such payments equals the amounts so appropriated.

(4) The authority of the Attorney General to pay compensation under this subsection shall be effective for any fiscal year only to the extent and in such amounts as may be provided in advance in appropriation Acts.

§ 1523. Congressional reports

(a)(1) The Secretary in consultation with the Coordinator, shall submit a report on activities under this subchapter to the Committees on the Judiciary of the House of Representatives and of the Senate not later than the January 31 following the end of each fiscal year, beginning with fiscal year 1980.

(2) Each such report shall contain—

(A) an updated profile of the employment and labor force statistics for refugees who have entered [under this chapter since May 1975] *the United States within the sixty-month period immediately preceding the fiscal year within which the report is to be made,* as well as a description of the extent to which refugees received the forms of assistance or services under this subchapter during that period;

§ 1524. Authorization of appropriations

(a)(1) [There are hereby authorized to be appropriated for fiscal year 1983 such sums as may be necessary for the purpose of carrying out the provisions (other than those described in paragraphs (2) and (3) of this chapter.] *There are authorized to be appropriated for each of the fiscal years 1986 and 1987 such sums as may be necessary for the purpose of carrying out the provisions of this chapter.*

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